

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X

HOUSING TRUST FUND CORPORATION,

Plaintiff,

Index No. _____

-against-

JOSEPH SALADINO

VERIFIED COMPLAINT

Defendant.

-----X

Plaintiff Housing Trust Fund Corporation (“HTFC”), by its attorneys, for its Verified Complaint, alleges as follows:

Parties and Property

1. Plaintiff HTFC was established pursuant to Section 45-a of the Private Housing Finance Law, as a subsidiary public benefit corporation under the New York State Housing Finance Agency, and has its principal office in Albany County, New York.

2. Upon information and belief, at all times relevant to this action, Joseph Saladino (“Defendant”) was, and remain, residents of Nassau County, New York.

3. Upon information and belief, at all times relevant to this action, Defendant was the owner of a property and house located at [REDACTED] Massapequa, New York 11758 (the “Subject Property”).

The Creation of the NY Rising Housing Recovery Program

4. On and after August 26, 2011, Hurricane Irene caused extensive damage to homes, businesses, and properties in New York State.

5. On and after September 7, 2011, Tropical Storm Lee caused further extensive damage to homes, businesses, and properties in New York State.

6. On and after October 27, 2012, Hurricane Sandy, the largest storm in New York's recorded history, resulted in additional unpredicted, widespread devastation to homes, businesses and other property owned by thousands of New York residents. (Hurricane Irene, Tropical Storm Lee and Hurricane Sandy are referred to individually as a "Storm" and collectively as the "Storms.")

7. In response to the damage caused by the Storms, the United States Congress appropriated \$4.4 billion in federal funds to the State of New York through the Department of Housing and Urban Development ("HUD") Community Development Block Grant - Disaster Recovery ("CDBG-DR") program (Public Law 13-2).

8. New York State designated HTFC to receive, manage, and disburse CDBG-DR funds (the "Storm Recovery Funds").

9. HTFC implemented the NY Rising Housing Recovery Program (the "Program"), which is administered through its Governor's Office of Storm Recovery, to award a portion of the Storm Recovery Funds to certain eligible individuals (the "Applicants") whose homes or properties were damaged or destroyed by the Storms (the "Storm-Damaged Properties").

10. To be eligible to receive Storm Recovery Funds, both the Applicant and the Storm-Damaged Property were required to meet certain eligibility criteria.

11. To be eligible to receive Storm Recovery Funds for a particular storm, the Storm-Damaged Property had to be located in an impacted county as determined by the Federal Emergency Management Agency ("FEMA"). HUD regulations also restrict administering federal CDBG-DR funds to second homes. (78 Fed.Reg 14345, March 5, 2013).

12. For Hurricane Irene, the impacted counties included Albany, Clinton, Columbia, Delaware, Dutchess, Essex, Franklin, Greene, Hamilton, Herkimer, Montgomery, Nassau, Orange, Ostego, Putnam, Rensselaer, Rockland, Saratoga, Schenectady, Schoharie, Suffolk, Sullivan, Ulster, Warren and Washington counties.

13. For Tropical Storm Lee, the impacted counties included Broome, Chemung, Chenango, Delaware, Fulton, Herkimer, Oneida, Orange, Ostego, Schenectady, Schoharie, Tioga, Tompkins and Ulster counties.

14. For Hurricane Sandy, the impacted counties included Bronx, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Suffolk, Sullivan, Ulster and Westchester counties.

15. Under the federal regulatory structure, CDBG-DR funding is designed to be the funding of absolute last resort and is intended to be given to only those persons most in need who still have identified unmet disaster recovery needs after the application of other public, private and charitable programs. HUD regulations also restrict administering federal CDBG-DR funds to second homes (78 Fed.Reg. 14345, March 5, 2013).

16. HTFC established policies to prevent funding of second homes by requiring that the damaged property be the primary residence of a deed owner at the time of the Storm for which the owner is seeking assistance.

17. Requirements such as these were established to ensure that storm-affected homeowners were supported in their efforts to repair and/or rehabilitate their primary residences, mitigate their damages and, in certain cases, elevate their homes. The goal of the Program is to help homeowners repair or reconstruct homes to a basic standard that meets minimum Federal CDBG-DR regulations and to cover certain eligible expenses available through the Program. The

Program will also award grants for certain improvements to increase the ability of primary residences to withstand future storms.

18. An assessor engaged by HTFC conducts an inspection of the Storm-Damaged Property and prepares an Estimated Cost of Repair (“ECR”) which provides a detailed description of the damages sustained and an itemized listing of the amounts allocated for eligible reimbursement, repair and/or reconstruction expenses. HTFC delivers to each Applicant a copy of their ECR which provides specific descriptions of those eligible items for which Storm Recovery Funds are being granted to cover.

19. It is estimated that 53,634 owner-occupied housing units in New York, exclusive of New York City, suffered major to severe damage from the effects of the Storms. Since its implementation in October 2013, the Program has received applications from 19,486 Applicants for unmet needs and delivered Storm Recovery Funds to 12,075 Applicants.

20. Because the Applicants were typically in dire need of emergency assistance, HTFC worked within state and federal guidelines to provide funds as quickly as possible. The agreements entered into between HTFC and the Applicants (the “Grant Agreements”) necessarily included provisions in which the Applicants agreed to continue to provide documents requested by HTFC in order to determine whether the Applicants’ changing situations and possible receipt of other funds (through private insurance or other programs, including the Federal Emergency Management Agency and the National Flood Insurance Program) continued to demonstrate eligibility for the Program.

21. Also, as a condition of the receipt of the Storm Recovery Funds from HUD, HTFC is required to recapture any payments made to ineligible Applicants and/or for ineligible Storm-Damaged Properties. As a condition of the Grant Agreements, all Applicants agreed that any Storm

Recovery Funds they received that may later be identified as incorrectly or improperly paid, based on duplication of payment, voluntary withdrawal from the Program, the Storm-Damaged Property not being the primary residence of the Applicant at the time of the Storm(s), the Applicant not owning the Storm-Damaged Property at the time of the Storm(s), or any other reason, must be returned to HTFC.

Defendant's Application for Storm Recovery Funds and Receipt of Duplicate Benefits

22. On or about June 13, 2013, Joseph Saladino initiated an application to receive Storm Recovery Funds related to damage incurred at the Subject Property. Defendant submitted additional documents in support of his application over several months (collectively referred to as "the Application").

23. As part of the Application, Defendant represented that the Subject Property was damaged by Hurricane Sandy and Hurricane Irene.

24. After an inspection of the Subject Property, damages were assessed and a total project cost was calculated in the amount of \$107,497.00. Subsequently the total project cost was increased to include a design allowance, increasing the total project cost to \$114,883.69 (the "Total Project Cost").

25. Defendant advised that he had received or would be receiving \$75,889.23, for his project, from the National Flood Insurance Program resulting in an original total duplication of benefits by the same amount.

26. Thereafter, based upon Defendant's representations and in accordance with the Grant Agreement (described more fully below), HTFC issued payment to Defendant totaling \$15,803.88.

27. Subsequently, HTFC learned that Defendant actually received additional funds from other sources for their project. Specifically, Defendant received \$64,545.89 from his homeowner's insurance. A repair offset in the amount \$1,414.95 was applied resulting in a reconciled total duplication of benefits in the amount of \$139,020.17 (the "Duplicate Benefits").

28. As the Total Project Cost was \$114,883.69 and Defendant received the Duplicate Benefits, as outlined above, the full amounts paid by HTFC (totaling \$15,803.88) resulted in an overpayment (the "Overpayment").

The Contract between HTFC and Defendant and the Payment of Storm Recovery Funds

29. On or about February 12, 2014, and based upon the Defendant's representations, HTFC approved Defendant's application for Storm Recovery Funds.

30. On or about November 6, 2014, HTFC and Defendant executed a Grant Agreement for Rehabilitation/Reconstruction in the amount \$31,607.77 for work to be performed with respect to the Subject Property (the "Agreement").

31. On or about January 21, 2015, HTFC disbursed Storm Recovery Funds to Defendant in the amount of \$15,803.88 representing one half of the Defendant's Rehabilitation and Reconstruction award relating to the Subject Property (the "Grant Award").

32. Under the terms of the Agreement, Defendant acknowledged his obligation to notify and reimburse HTFC for the full amount of any disaster related assistance, including insurance proceeds, that he previously received, subsequently received, or with reasonable effort would be eligible to receive for the same purposes for which the Grant Award was provided to the extent that such proceeds or assistance has not already been considered in the calculation of your award

33. Defendant also agreed to take any requested actions, deliver requested documentation, and sign and deliver such other instruments and documents as may be reasonable, necessary or appropriate to effectuate, or demonstrate compliance with the requirements of the Agreement.

34. Defendant specifically certified that all representations and information contained in his Application and/or any other document provided to HTFC in connection with the Grant Award remained true, correct and complete, and that Defendant would promptly notify HTFC of the occurrence of any event or any material change in circumstances which would make any representation or information untrue or incorrect or otherwise impair their ability to fulfill his obligations under the Agreement.

35. The Agreement listed the actions which would result in a default of the Agreement, including the making or filing of any false, misleading or fraudulent statement or Defendant's omission of any material fact.

36. The Agreement gave HTFC the sole discretion to determine whether or when a default has occurred under the Agreement and whether or when Defendant may have cured such default.

Defendant's Ineligibility for the Program and Duplication of Benefits Default

37. Because Defendant received the Duplicate Benefits, Defendant was ineligible to receive the Overpayment.

38. Pursuant to terms of the Agreement, Defendant is obligated to reimburse HTFC for the full amount of the Grant Award that he received from HTFC since the Duplicate Benefits were for the same purpose for which the Grant Award was provided and the Duplicate Benefits exceeded the amount received from the Program.

39. Pursuant to the terms of the Agreement, HTFC determined and declared that the Defendant had defaulted under the Agreement by accepting duplicate payments.

40. By letters dated June 13, 2017 and July 5, 2017 HTFC advised Defendant that his grant award calculation had been updated resulting in the Overpayment in the amount of \$15,803.88. HTFC requested that Defendant return the Overpayment.

41. In addition, HTFC advised Defendant that he had the opportunity to appeal this decision if he disagreed with HTFC's determination.

42. HTFC did not receive a completed appeal form.

43. Subsequently, by demand letters dated August 31, 2017, September 28, 2017, October 26, 2017, January 16, 2018, March 23, 2018 and July 3, 2018, HTFC advised Defendant of its intention to collect the Overpayment and sent a Repayment Hardship Request Form and Certification to the Defendant (the "Hardship Form").

44. The Hardship Form offered Defendant the opportunity to demonstrate through verifiable financial information, as well as a description of extenuating circumstances, that he lacked the financial resources to repay the Overpayment or that such repayment would impose a severe financial hardship. HTFC would then evaluate whether, despite Defendant's default, the Overpayment should be reduced in whole or in part.

45. HTFC did not receive a completed Hardship Form from Defendant.

46. To date, Defendant has not returned any amount of Storm Recovery Funds to HTFC, and never otherwise cured the default.

**AS AND FOR A FIRST CAUSE OF ACTION
FOR BREACH OF CONTRACT**

47. HTFC repeats and re-alleges every allegation contained in paragraphs 1 through 46 as if fully set forth herein.

48. HTFC and Defendant formed a contract as set forth in the Agreement.

49. The Agreement is a valid and enforceable contract.

50. HTFC has fully performed all of its obligations, material and otherwise, under the Agreement, including disbursing payment to Defendant.

51. Defendant breached the Agreement by failing to advise HTFC that he had received the Duplicate Benefits, making him ineligible to receive the Overpayment.

52. Defendant's certification in the Agreement of the fact that he had notified HTFC of all proceeds or assistance of any other actual or potential duplicate benefits and/or that he would promptly notify HTFC of any duplicate benefits received constitutes a material breach of the Agreement and an Overpayment to Defendant.

53. Defendant's acceptance of the Grant Award under the Agreement and his failure to return the Overpayment is a further material breach of the Agreement.

54. As a result of Defendant's breach of contract, HTFC has been damaged in the amount of \$15,803.88.

**AS AND FOR A SECOND CAUSE OF ACTION
FOR FRAUDULENT INDUCEMENT**

55. HTFC repeats and re-alleges every allegation contained in paragraphs 1 through 54 as if fully set forth herein.

56. Defendant received the Duplicate Benefits making him ineligible to receive the Overpayment.

57. By executing the Agreement and accepting the Grant Award thereunder, Defendant represented to HTFC that he had notified HTFC of all duplicate benefits and/or that he would promptly notify HTFC of any duplicate benefits received.

58. That representation was false.

59. Defendant knew or should have known this representation was false.

60. Defendant represented to HTFC that he had not received the Duplicate Benefits to induce HTFC to disburse Storm Recovery Funds to Defendant.

61. HTFC justifiably relied upon Defendant's representation in deciding to disburse Storm Recovery Funds to Defendant.

62. As a result, HTFC has been damaged in the amount of \$15,803.88.

**AS AND FOR A THIRD CAUSE OF ACTION
FOR UNJUST ENRICHMENT**

63. HTFC repeats and re-alleges every allegation contained in paragraphs 1 through 62 as if fully set forth herein.

64. To the extent that the Court determines that the Agreement is not valid and enforceable, Defendant was unjustly enriched at the expense of HTFC.

65. Defendant knew or should have known that his receipt of the Duplicate Benefits rendered him ineligible to receive Storm Recovery Funds from HTFC, and knowingly accepted the Grant Award and entered into the Agreement with HTFC.

66. Because Defendant was ineligible to receive it, the Overpayment is an unjustified windfall.

67. In fairness and good conscience, Defendant should not retain the Overpayment.

68. Equity demands that Defendant return the Overpayment to HTFC.

WHEREFORE, Plaintiff respectfully requests the following:

- (a) On the first cause of action, that the Court enter judgment in favor of Plaintiff and against Defendant in the amount of \$15,803.88., together with prejudgment interest from June 13, 2017 (the date Defendant was informed of his ineligibility) through

the date of judgment, interest from the date of decision to the date of entry of judgment, and interest from the date of judgment and costs and disbursements;

- (b) On the second cause of action, that the Court enter judgment in favor of Plaintiff and against Defendant in the amount of \$15,803.88., together with prejudgment interest from June 13, 2017 (the date Defendant was informed of his ineligibility) through the date of judgment, interest from the date of decision to the date of entry of judgment, and interest from the date of judgment and costs and disbursements;
- (c) On the third cause of action, that the Court enter judgment in favor of Plaintiff and against Defendant in the amount of \$15,803.88., together with prejudgment interest from June 13, 2017 (the date Defendant was informed of his ineligibility) through the date of judgment, interest from the date of decision to the date of entry of judgment, and interest from the date of judgment and costs and disbursements;
- (d) That the Court grant such other further relief as the Court may deem just and proper.

Dated: September 27, 2018
New York, New York

D'ARCAMBAL OUSLEY & CUYLER
BURK LLP

By: /s/ Vedant A. Gokhale
Vedant A. Gokhale
Attorneys for Plaintiff Housing Trust Fund Corporation
40 Fulton Street
Suite 1005
New York, New York 10038

ATTORNEY VERIFICATION

Vedant A. Gokhale is an attorney admitted to practice in the courts of New York State and an associate with d'Arcambal Ousley & Cuyler Burk LLP, counsel for Plaintiff for Housing Trust Fund Corporation in this action. Deponent has read the foregoing Verified Complaint and knows the contents thereof which is true as to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters, deponent believe them to be true. This verification is made by deponent and not by an officer of Defendant pursuant to CPLR 3020(d)(3) because the corporation is not located in the county in which counsel maintains an office.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows: communications with employees of Defendant and review of files maintained in ordinary course of business.

Deponent affirms that the foregoing statements are true under the penalties of perjury.

Dated: September 27, 2018

/s/ Vedant A. Gokhale

Vedant A. Gokhale